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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

LEONARDO DURAN,

Defendant and Appellant.

B216462

(Los Angeles County
Super. Ct. No. BA337038)

APPEAL from a judgment of the Superior Court of Los Angeles County, Carol H. Rehm, Judge. Dismissed.

Johnson & Barnes and Cheryl Barnes Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance on behalf of Plaintiff and Respondent.

Defendant, Leonardo Duran, purports to appeal from a judgment entered after he pled no contest to two felony charges and admitted he previously had been convicted of a serious and violent felony. Defendant never filed a probable cause certificate issuance request. Nor has defendant filed a motion to amend his notice of appeal. It appears we may not have jurisdiction because defendant failed to secure a probable cause certificate and the notice of appeal did not raise any noncertificate grounds. (See *People v. Mendez* (1999) 19 Cal.4th 1084, 1096; *People v. Lloyd* (1998) 17 Cal.4th 658, 664.) We have a duty to raise issues concerning our jurisdiction, Penal Code section 1237.5, and rule 8.304(b) of the California Rules of Court on our own motion. (*Jennings v. Marralle* (1994) 8 Cal.4th 121, 126; *Olson v. Cory* (1983) 35 Cal.3d 390, 398.) Hence, we issued an order to show cause and set the matter for oral argument. Defendant has failed to fully and timely comply with both Penal Code section 1237.5 and California Rules of Court, rule 8.304(b). (*In re Chavez* (2003) 30 Cal.4th 643, 651; *People v. Mendez, supra*, 19 Cal.4th at p. 1099; *People v. Way* (2003) 113 Cal.App.4th 733, 736.)

Although defendant may appeal from his sentence, the notice of appeal does not comply with California Rules of Court, rule 8.304(b)(4)(B). The notice of appeal does not comply with the requirement that it *state* he is appealing from matters occurring after the plea which do not affect its validity. (Cal. Rules of Court, rule 8.304(b)(4)(B).) Moreover, as noted, defendant has not filed a motion to amend or construe the notice of appeal to involve post-plea matters. No declaration or other supporting evidence has been filed to support the conclusion defendant intended to appeal from the sentence. (Cal. Rules of Court, rule 8.54(a)(2); *People v. McEwan* (2007) 147 Cal.App.4th 173, 179.)

In *People v. Mendez, supra*, 19 Cal.4th at page 1096, our Supreme Court explained the nature of the requirement that the notice of appeal comply with what is now California Rules of Court, rule 8.304(b)(4)(B): “Rule 31(d), second paragraph, implements the exception to section 1237.5 by providing, in pertinent part, that the defendant may take and prosecute an appeal, without a statement of certificate grounds or a certificate of probable cause, if he has based his appeal solely on noncertificate grounds

and has filed a notice of appeal so stating within 60 days after rendition of judgment. (E.g., *People v. Lloyd, supra*, 17 Cal.4th at p. 664; see *People v. Panizzon* [(1996)] 13 Cal.4th [68,] 75; *People v. Jones* [(1995)] 10 Cal.4th [1102,] 1106-1107.) If he does so, his appeal is operative in this regard. (See rule 31(d), 2d par.)” Further, there is no evidence defendant’s trial counsel was asked to prepare any papers relevant to an appeal from post-plea orders and failed to do so. (*People v. Mendez, supra*, 19 Cal.4th at p. 1100, fn. 10; *People v. Ribero* (1971) 4 Cal.3d 55, 66.) Hence, there is no merit to the argument we should treat the notice of appeal to involve only post-plea matters which do not affect its validity.

There is no merit to defendant’s contention the outcome of this case is controlled by *People v. Buttram* (2003) 30 Cal.4th 773, 790-791. *Buttram* involved the issue of whether a defendant could appeal after a guilty plea and then assert the trial court abused its discretion in selecting a sentence within the parameters of the plea agreement. (*Id.* at pp. 777.) Our Supreme Court held that defendant could in fact appeal from the ensuing judgment after the trial court exercised its discretion and selected a sentence within the agreed to sentencing range without securing a probable cause certificate. (*Id.* at p. 791.) In the present case, defendant could no doubt appeal his sentence. But his notice of appeal does not, as required by California Rules of Court, rule 8.304(b)(4)(B), state the appeal is based on grounds that arose after he pled no contest and do not affect the validity of his plea. This issue, the adequacy of the notice of appeal, was not an issue litigated in *Buttram* and therefore that opinion does not constitute controlling authority here. (*Palmer v. GTE California, Inc.* (2003) 30 Cal.4th 1265, 1278 [““an opinion is not authority for a proposition not therein considered””]; *Little v. Auto Stiegler, Inc.* (2003) 29 Cal.4th 1064, 1081 [““cases are not authority for propositions not considered””].)

Defendant in his brief argues there may be errors in the abstract of judgment. Those jurisdictional matters may be raised with trial court. We have no jurisdiction at present. If the trial court declines to correct any jurisdictional errors, we can entertain appropriate requests either on direct appeal or in a writ petition at that time. Appointed

appellate counsel will be compensated by the California Appellate Project for any such requests.

The appeal is dismissed.

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TURNER, P. J.

We concur:

ARMSTRONG, J.

KRIEGLER, J.